

53B-21-101. Financing of projects or buildings -- Issuance of bonds -- Sale price determined by board -- Payment of bonds -- Bonds exempt from income taxation.

(1) In order to pay all or part of the cost of the acquisition, purchase, construction, improvement, remodeling, addition to, extension, equipment, and furnishing of any project or building, including the acquisition of all necessary land, the board, on behalf of the institution for which this is to be done, may do the following: (a) borrow money on the credit of the income and revenues to be derived from the operation of the building, the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from sources other than by appropriations by the Legislature to issuing institutions and, in anticipation of the collection of this income and revenues, issue negotiable bonds of the institution in an amount as the board determines is necessary for these purposes; and (b) provide for the payment of these bonds and the rights of their holders as provided in this chapter.

(2) Bonds may: (a) be issued in one or more series; (b) bear any date or dates; (c) mature at any time or times not exceeding 40 years from their date; (d) be in any denominations; (e) be in any form, either coupon or registered; (f) carry registration and conversion privileges; (g) be executed in any manner; (h) be payable in any medium of payment at any place; (i) be subject to any terms of redemption with or without premium; and (j) bear interest at any rate or rates as provided by resolution adopted by the board at or prior to the sale of the bonds.

(3) The bonds may be sold in a manner, at the lowest obtainable rate or rates of interest, and at a price or prices as determined by the board. These determinations are conclusive.

(4) The board may authorize one issue of bonds for the acquisition, purchase, construction, improvement, remodeling, adding to, extending, furnishing, or equipping of more than one building, including the acquisition of all necessary land, and may make the bonds payable from the combined revenues of all the buildings as well as from student building fees, land grant interest, net profits from proprietary activities, and from sources other than those derived from appropriations from the Legislature.

(5) The bonds issued under this chapter have all of the qualities and incidents of negotiable paper and are not subject to state or local income taxation.

Enacted by Chapter 167, 1987 General Session

53B-21-102. Bonds do not create state indebtedness -- Special obligations -- Discharge of bonded indebtedness -- Agreements and covenants by the board regarding bonds -- Enforcement by court action.

(1) (a) The bonds issued under this chapter are not an indebtedness of the state, of the institution for which they are issued, or of the board.

(b) They are special obligations payable solely from the revenues derived from the operation of the building and student building fees, land grant interest, net profits from proprietary activities, and any other revenues pledged other than appropriations by the Legislature as provided in Sections 53B-21-101 and 53B-21-111.

(c) (i) Notwithstanding any other provision of law, the chair of the board shall certify annually by December 1 any amount required to:

(A) restore any debt service reserve funds established by the board for bonds issued under this chapter to the amount required by the related authorizing proceedings; or

(B) meet projected shortfalls of payment of principal or interest or both for the following year on any bonds issued under this chapter.

(ii) The governor may request from the Legislature an appropriation of the amount certified under Subsection (1)(c)(i) to restore the debt service reserve funds to their required amounts or to meet any projected principal or interest payment deficiency.

(d) (i) The state may not alter, impair, or limit the rights of bondholders or persons contracting with the board until the bonds, including interest and other contractual obligations, are fully met and discharged.

(ii) Nothing in this chapter precludes an alteration, impairment, or limitation if provision is made by law for the protection of bondholders or persons entering into contracts with the board.

(2) The board shall pledge all or any part of the revenues to the payment of principal of and interest on the bonds.

(3) In order to secure the prompt payment of principal and interest and the proper application of the revenues pledged, the board may, by appropriate provisions in the resolution authorizing the bonds:

(a) covenant as to the use and disposition of the proceeds of the sale of the bonds;

(b) covenant as to the operation of the building and the collection and disposition of the revenues derived from the operation;

(c) collect student building fees from all students, and pledge the fees to the payment of building bonds;

(d) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement into which it may enter in authorizing and issuing the bonds;

(e) covenant and agree to carry insurance on the building, and its use and occupancy, and provide that the cost of any insurance is part of the expense of operating the building;

(f) vest in a trustee:

(i) the right to receive all or any part of the income and revenues pledged and assigned to or for the benefit of the holder or holders of the bonds issued under this chapter, and to hold, apply, and dispose of the income and revenue; and

(ii) the right to:

(A) enforce any covenant made to secure the bonds;

(B) execute and deliver a trust agreement which sets forth the powers and duties and the remedies available to the trustee and limits the trustee's liabilities; and

(C) prescribe the terms and conditions upon which the trustee or the holders of the bonds in any specified amount or percentage may exercise such rights and enforce any or all covenants and resort to any appropriate remedies;

(g) (i) fix rents, charges, and fees, including student building fees, to be imposed in connection with and for the use of the building and its facilities, which are:

(A) income and revenues derived from the operation of the building; and

(B) expressly required to be fully sufficient either by themselves or with land grant interest and net profits from proprietary activities, or from sources other than by appropriations by the Legislature to such issuing institutions to assure the prompt payment of principal of and interest on the bonds as each becomes due; and

(ii) make and enforce rules with reference to the use of the building and with reference to requiring any class or classes of students to use the building as desirable for the welfare of the institution and its students or for the accomplishment of the purposes of this chapter;

(h) covenant to maintain a maximum percentage of occupancy of the building;

(i) covenant against the issuance of any other obligations payable from the revenues to be derived from the building, unless subordinated;

(j) make provision for refunding;

(k) covenant as to the use and disposition of sources of revenue other than those derived from appropriations by the Legislature, and pledge those sources of revenues to the payment of bonds issued under this chapter;

(l) make other covenants considered necessary or advisable to effect the purposes of this chapter; and

(m) delegate to the chair, vice-chair, or chair of the Budget and Finance Subcommittee the authority:

(i) to approve any changes with respect to interest rate, price, amount, redemption features, and other terms of the bonds as are within reasonable parameters set forth in the resolution; and

(ii) to approve and execute all documents relating to the issuance of the bonds.

(4) (a) The agreements and covenants entered into by the board under this section are binding in all respects upon the board and its officials, agents, and employees, and upon its successors.

(b) They are enforceable by appropriate action or suit at law or in equity brought by any holder or holders of bonds issued under this chapter.

Amended by Chapter 324, 2010 General Session

53B-21-103. Agreements with federal government for funds.

The board may enter into an agreement with the federal government in order to obtain funds for the following purposes: (1) to supplement bond proceeds used to pay for the projects referred to in Section 53B-21-101; and (2) to supplement income and revenues which, under this chapter, are used to pay debt service on bonds issued under this chapter.

Enacted by Chapter 167, 1987 General Session

53B-21-104. Deposit of bond proceeds -- State Building Board responsibilities -- Approval of Division of Facilities Construction and Management.

(1) The State Board of Regents' treasurer or other fiscal officer, with the approval of the state treasurer, deposits the proceeds from the sale of bonds under this chapter into a special Construction Trust Fund Account established in compliance with

the State Money Management Act of 1974.

(2) The proceeds are credited to the board on behalf of the institution of higher education for which the bonds were issued.

(3) The proceeds are kept in a separate fund and used solely for the purpose for which they were authorized by the board.

(4) The State Building Board makes all contracts and executes all instruments which it considers necessary to provide for the projects referred to in Section 53B-21-101.

(5) The proceeds in the special Construction Trust Fund Account shall be disbursed only upon receipt of written statements supported by itemized estimates and claims presented to the Division of Facilities Construction and Management as provided in the resolution authorizing the issuance of the bonds.

Enacted by Chapter 167, 1987 General Session

53B-21-105. Disposition and use of income from operation of buildings -- Payment of principal and interest on bonds.

(1) Except for the revenues paid directly to a trustee under Subsection 53B-21-102(3)(f), all income and revenues from the operation of the buildings under this chapter are deposited as collected in a fund established in compliance with the State Money Management Act.

(2) (a) This money is for the payment of the principal and interest on the bonds authorized under this chapter.

(b) The money shall also be used, to the extent provided in the resolution authorizing the bonds, to pay for the cost of maintaining and operating the building and to establish reserves for that purpose.

(3) The State Board of Regents treasurer or other designated fiscal officer shall, not less than 15 days prior to the date interest and principal payments are due, transmit to the paying agent sufficient money from the fund to pay the obligation.

Amended by Chapter 342, 2011 General Session

53B-21-106. Examination and certification of bonds by attorney general -- Recital of certification -- Incontestability of bonds.

(1) The resolutions and proceedings authorizing the issuance and confirming sale of bonds under this chapter are submitted to the attorney general for examination.

(2) When the resolutions and proceedings have been examined and the bonds certified as legal obligations by the attorney general, the bonds are incontestable in any court in the state unless suit is brought within 30 days from the date of the approval.

(3) A bond authorized under this section shall contain a recital on its face in substantially the following form: "This bond is one of a series of bonds which were certified as legal obligations by the attorney general of the state of Utah on ____."

(4) Bonds authorized, issued, and sold under resolutions and proceedings approved by the attorney general are prima facie valid and binding obligations according to their terms.

(5) The only defense which may be offered in any suit instituted after the 30-day

period has expired is forgery, fraud, or violation of the Constitution.

Enacted by Chapter 167, 1987 General Session

53B-21-107. Investment in bonds by private and public entities -- Approval as collateral security.

(1) Any bank, savings and loan association, trust, or insurance company organized under the laws of this state or federal law may invest its capital and surplus in bonds issued under this chapter.

(2) The officers having charge of a sinking fund or any county, city, town, township, or school district may invest the sinking fund in bonds issued under this chapter.

(3) The bonds shall also be approved as collateral security for the deposit of any public funds and for the investment of trust funds.

Enacted by Chapter 167, 1987 General Session

53B-21-108. Financing project by contract or lease agreement instead of by bond issue -- Authority of board -- Term of lease -- Terms of agreement -- Board covenants.

(1) Whenever the board, by resolution, finds and declares it preferable to acquire a project under this chapter by purchase or lease of the facilities constituting the project under an agreement which provides the consideration for the purchase or lease to be paid in installments during a period not exceeding 40 years, rather than through the issuance of revenue bonds by the board in the manner provided in this chapter, it may do so upon compliance with this section.

(2) The board may lease any portion of the campus of the institution necessary as a site for a project which the board is authorized to acquire under Section 53B-20-103, to any person, for a term not exceeding 40 years.

(3) The agreement authorized to be entered into by the board shall provide that the person shall construct, improve, remodel, add to, or extend a project of the type and construction described in the agreement on the part of the campus to be leased to the person, or on such real property as may be acquired for that purpose by the person.

(4) The agreement shall further provide for the leasing of the project, including necessary equipment, furnishings, and land, from the person to the board executing the agreement, for a period not exceeding 40 years.

(5) Prior to the execution of the agreement, the person proposing to lease the project, including the necessary equipment, furnishings, and land, to the board shall submit to the board all plans, specifications, and estimates for the project.

(6) The plans, specifications, and estimates shall be approved by resolution of the board prior to the execution of the agreement.

(7) The board may, by appropriate provisions in the agreement:

(a) covenant as to the use which will be made of the project;

(b) covenant as to the operation, maintenance, and supervision of the project;

(c) covenant to collect fees and charges from all students and other persons availing themselves of the use of the accommodations and facilities of the project;

(d) covenant to levy and collect student building fees from all regular and part-time students enrolled in the institution for the use and availability of the project;

(e) covenant as to the collection, use, and disposition of the proceeds arising from the collection of all the revenues, fees, and charges;

(f) covenant to impose and collect fees and charges in amounts adequate to pay all costs incurred in maintaining and operating the project and to pay the amortization of the acquisition cost of the project, including necessary equipment and furnishings, and interest on the unpaid part of the acquisition cost, whether represented by rental installments or otherwise;

(g) covenant to pledge all revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project to the payment of the rental installments provided for under the terms of the contract or lease agreement;

(h) covenant as to the rights, liabilities, powers, and duties arising from the breach of any covenant or agreement contained in the agreement;

(i) covenant and agree to carry any insurance on the project, and its use and occupancy, as the board considers desirable, and to provide that the cost of the insurance shall be included as a part of the cost of operating the project;

(j) covenant to make and enforce such parietal rules and regulations with reference to the use of the facilities comprising the project, or any part of the project, and with reference to requiring any class of students to use the project, or any part of the project, as the board determines desirable for the institution; and

(k) covenant against the pledging of the revenues, fees, and charges, including student building fees, arising from the ownership and operation of the project for any purpose other than the payment of the rental installments required to be paid under the agreement, or against the issuance of any obligations payable therefrom, unless the pledge or obligations are made subordinate to the agreement. Nothing in this section prevents the board from providing conditions and terms under which pledges may be made and obligations issued on a parity with the pledge of revenues, fees, and charges under the agreement.

(8) It shall be specifically provided in the agreement that the board is not obligated to pay the rental installments or amortization of the acquisition cost of the project, and interest on the unpaid part of the acquisition cost, from any source other than the revenues, fees, and charges arising from the ownership and operation of the project, including student building fees levied for the use and availability of the facilities of the project.

(9) Each agreement shall provide that the rental installments, or amortization of the acquisition cost of the project, including necessary equipment, furnishings, and land, and interest on the unpaid part of the acquisition cost, are not an obligation of the state, and that ad valorem taxes or appropriations from the state may not be used to pay or discharge the amounts required to be paid under the agreement.

(10) The agreement shall also provide that when the amortized acquisition cost, as represented by the rental installments, has been paid in full and when all obligations, if any, issued by the person to finance the cost of the acquisition of the project have been paid in full as to both principal and interest, the agreement terminates and title to the project, including the land upon which the project is situated, and all equipment and furnishings, vests in the board.

(11) The agreement may provide that the board may purchase the project, including the land upon which the project is situated, and all equipment and furnishings, which is subject to the agreement upon terms wherein rental installments previously made, or a portion of them, are deducted from the cost of acquisition of the project, including the land upon which the project is situated, and all equipment and furnishings, as provided for in the agreement.

(12) The board may furnish without charge heat, light, water, power, and similar facilities for any project leased by the board for operation by the board under this section, and all projects acquired and constructed under this section are exempt from taxation.

(13) The agreement may provide that the board may lease the project, including the land upon which the project is situated, and all equipment and furnishings, to any person for a term not exceeding 40 years for operation by any person.

(14) A lease may not be entered into unless the rental to be paid to the board by the person is sufficient to satisfy the rental to be paid by the board to the person from which the project was originally leased. But in no event may the rental paid to the board be less than the fair rental value of the property leased.

Enacted by Chapter 167, 1987 General Session

53B-21-109. Student building fees.

(1) The board issuing bonds under this chapter may impose and collect student building fees from all students in attendance at the institution in behalf of which the bonds are issued.

(2) The board may also pledge the fees in the same manner provided for the pledging of other revenues of the board or institution under this chapter.

Enacted by Chapter 167, 1987 General Session

53B-21-110. Refunding bonds -- Issuance -- Proceeds -- Limitations.

(1) Bonds may be issued under this chapter for the purpose of refunding any bonds previously issued under authority of this chapter, if the bonds to be refunded are due or callable, redeemable, or repurchasable by their terms on or prior to the date that the refunding bonds are issued or will become due or callable, redeemable, or repurchasable by their terms within 10 years thereafter or if the bonds to be refunded, even though not becoming due, callable, redeemable, or repurchasable within this period, are voluntarily surrendered by the bondholders for cancellation at the time of the issuance of the refunding bonds.

(2) These refunding bonds shall have such details, bear such rate of interest, and be otherwise issued and secured as provided by the board authorizing the issuance of the bonds and as otherwise provided in this chapter. However, the changes in the security and revenues pledged to the payment of the bonds may be made by the board as may be provided by it in the proceedings authorizing the bonds, but in no event shall the refunding bonds ever be secured by revenues not authorized by this chapter to be pledged to the payment of bonds issued for other than refunding purposes.

(3) Refunding bonds issued under this chapter may be exchanged for a like principal amount of the bonds to be refunded, may be sold in the manner provided in this chapter for the sale of other bonds, or may be exchanged in part and sold in part. If sold, the proceeds of the sale not required for the payment of expenses may be invested in United States Government obligations or in obligations unconditionally guaranteed by the United States of America in a manner as may be provided in the authorizing resolution, so long as these investments will mature with interest so as to provide funds to pay when due, or called for redemption, the bonds to be refunded together with interest and redemption premiums, if any.

(4) The proceeds or obligations shall, and other funds legally available to the board for such purposes may, be deposited in trust with an FDIC insured bank doing business in Utah, or its successor, to be held for the payment and redemption of bonds to be refunded.

(5) The deposit and any reinvestment shall be held in trust by the escrow agent for the payment of bonds with interest and redemption premiums, if any, on maturity or upon an available redemption date or upon an earlier voluntary surrender with the consent of the board.

(6) No refunding bonds may be issued under this section in a principal amount in excess of the principal amount of the bonds to be refunded nor may any bonds not maturing or callable for redemption under their terms as provided in this section be refunded without the consent of the holders of the bonds. Refunding bonds authorized and issued under this section may in the discretion of the board be combined with other bonds to be authorized and issued under this chapter, and a single issue of bonds may be authorized, part for improvement and part for refunding purposes.

Enacted by Chapter 167, 1987 General Session

53B-21-111. Authorized loans for acquisition, construction, furnishing, and equipping of projects -- Evidence of indebtedness -- Provisions -- Agreements with lending institutions -- Satisfaction and discharge -- Exemption from taxation.

(1) For the purpose of paying all or part of the costs of a project under Section 53B-21-101, the board, on behalf of the institution of higher education for which the project is to be acquired, constructed, furnished, and equipped, may borrow money on the credit of the income and revenues to be derived from the operation of the project, and from the imposition of student building fees, land grant interest, and net proceeds from proprietary activities or from sources other than by appropriations by the Legislature to the issuing institutions, and to evidence the indebtedness may execute any promissory note or other evidence of indebtedness appropriate, provided the note or other evidence of indebtedness specifies on its face that it does not constitute a general obligation of the state.

(2) The board may, in order to secure the payment of the loan, grant a mortgage, trust deed, or other security device covering all or part of the project, and the land acquired for the project and upon which the project is situated.

(3) The rights and remedies available in the event of a default to the mortgagee, trustee, or other lender are subject to agreement as contained in the mortgage, trust

deed, or other security instrument.

(4) The agreement may provide that, in the event of a default in the payment or the violation of any agreement contained in the document, the mortgage, trust deed, or other security instrument may be foreclosed or otherwise realized in any manner permitted by law. However, no deficiency judgment shall lie in any event and no breach of the agreement shall impose any general obligations or liability upon the state or the borrowing institution.

(5) The note or other evidence of indebtedness may have all the qualities and incidents of negotiable paper, and is not subject to taxation by the state, except for the corporate franchise tax, or to taxation by any county, municipality, or political subdivision of the state.

(6) The note or other evidence of indebtedness and mortgage may contain additional provisions with respect to repayment out of the income and revenues derived from the operation of the building, from the imposition of student building fees, land grant interest, and net profits from proprietary activities, or from sources other than appropriations by the Legislature to any issuing institution as the board considers necessary and proper.

(7) The board may enter into an agreement it considers necessary with the lending institution as to the use which will be made of any project, the operation, maintenance, and supervision of the project, the imposition of fees, charges, and rentals for its use, including the equipment contained therein, and the collection and disposition to be made of the proceeds of fees, charges, and rentals.

(8) In order to secure the prompt payment of principal and interest and to pay the cost of the maintenance and operation of the project, the board has the same power and authority with respect to the indebtedness created under this section as it has in respect to the issuance of bonds under the other provisions of this chapter.

(9) When any obligation owing to finance the cost of any project constructed or acquired under this section has been fully paid as to principal and interest, the mortgage is satisfied and discharged.

(10) All buildings and additions to existing buildings erected, and the equipment therefor, is exempt from taxation as long as the legal title remains in the borrowing agency.

Enacted by Chapter 167, 1987 General Session

53B-21-112. Financing projects and buildings -- Security instruments -- Terms.

(1) In connection with the financing of any project or building under this chapter, the board, on behalf of an institution of higher education, may grant a purchase money mortgage, trust deed, or other security device pledging any land, buildings, furnishings, equipment, or other facilities to be acquired or constructed and paid for from the proceeds of the financing.

(2) The rights and remedies available in the event of a default to the mortgagee, trustee, or lender shall be as agreed upon between the board and the lender and contained in the document.

(3) In making any agreements, the board does not have the power to obligate

itself or the state, except with respect to: (a) the project; (b) the building and the application of the revenues from it; (c) the revenues from any special fund pledged to repay it; (d) the proceeds of any ad valorem tax; or (e) any appropriations from the Legislature of the state.

(4) Any purchase money mortgage, trust deed, or other security device made or granted by the board to secure the loan or other method of financing may also provide that in the event of a default in payment or the violation of any agreement, the mortgage, trust deed, or security device may be foreclosed or otherwise realized in any manner permitted by law. However, no deficiency judgment shall lie in any event and the breach of the agreement does not impose any general obligation or liability upon the board, the state, the proceeds of ad valorem taxes, or appropriations from the Legislature.

(5) The purchase money mortgage, trust deed, or other security device may also provide that any mortgagee, trustee, lender, or the holder of any evidence of indebtedness secured by the security instrument may become the purchaser at any foreclosure sale, if the highest bidder.

Enacted by Chapter 167, 1987 General Session

53B-21-113. Limitation on issuance of bonds.

No bonds may be authorized or issued by the State Board of Regents or the board of any institution under this chapter without the prior approval of the Legislature.

Enacted by Chapter 167, 1987 General Session